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FORM NLRB-5026
(5-78)

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

512-5081-1700
512-5081-3300
512-5081-7500

TO Gerard P. Fleischut, Regional Director
Region 26

DATE March 17, 1981

FROM Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT Alliance Rubber Company, et al.
Case 26-CA-8861; 8480; 8559; 8717

This memorandum confirms telephonic communication of March 5, 1981 in which the Region was authorized to dismiss the instant charge, absent withdrawal.

This Section 8(a)(1) case was submitted for advice on the issue of whether the complaint in Cases 26-CA-8480, 8559, and 8717, should be amended to allege the service of subpoenas duces tecum by the Employer on the 15 alleged discriminatees in advance of the hearing in those cases as an independent violation of Section 8(a)(1). 1/

An amended consolidated complaint in Cases 26-CA-8480, et. al. issued on December 30, 1980, alleging, inter alia, that the Employer interrogated employees regarding their Union activity through the use of polygraph examinations and subsequently terminated 16 employees for their Union activity. On January 17, 1981, 2/ nine days before the scheduled commencement of the hearing on this complaint, the Employer, through its attorneys, caused subpoenas duces tecum to be served on 15 alleged discriminatees named in the consolidated complaint. 3/ On January 22,

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1/ The issue of whether the Employer's law firm should be named as a respondent in the amended complaint was also submitted for advice. In view of the disposition herein, it is unnecessary to decide that issue.

2/ All dates hereinafter are in 1981 unless otherwise specified.

3/ The subpoenas directed the employees to produce at the hearing the following material:

1. All letters, correspondence, hand-outs, notes, memoranda, notes of meetings and/or
(Footnote Cont'd)

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counsel for the Charging Party moved to quash the subpoenas. At the January 26 unfair labor practice hearing, after the attorneys for the Employer called for the production of the subpoenaed documents, the Administrative Law Judge (ALJ) heard argument on the motion to quash. On February 3, the Charging Party filed the instant charge, naming the Employer and its law firm, alleging that the named parties violated Section 8(a)(1) of the Act by causing the subpoenas to be served on the alleged discriminatees. On February 11 the ALJ granted the Charging Parties' motion to quash the subpoenas in question.

It was concluded, on the facts presented, that the service of the subpoenas duces tecum in the instant case was not violative of Section 8(a)(1).

First, it was noted that subpoenas duces tecum require individuals upon whom they are served to produce requested documents at a hearing at which they are to testify. Hence, the subpoenaed individuals' rights are protected by the full range of procedural safeguards afforded by a formal judicial proceeding. Thus, while a request by the Employer for the specific information subpoenaed in the instant case might, in another context, be deemed coercive interrogation, it could not be said that the service of the subpoenas duces tecum here was similarly unprivileged. This is particularly true where, as here, the ALJ ultimately granted the

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3/ (Cont'd)

> telephone conversations, and any other similar documents in your possession relating to membership and/or organizational activity on behalf of United Brotherhood of Carpenters and Joiners of America, or any subsidiary or affiliate thereof, at Alliance Rubber Company in Hot Springs, Arkansas, during the period from January 1, 1980, through May 8, 1980.
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> 2. All reports, letters, correspondence, notes, memoranda, notes of meetings and/or telephone conversations, and any other similar documents relating to the original filing of the unfair labor practice charge against Alliance Rubber Company in Case No. 26-CA-8480, the subsequent amendment of this charge on or about July 22, 1980, and the investigation of the events alleged in and underlying these charges.

motion to quash the subpoenas.

Second, the material covered by the subpoenas duces tecum could be viewed as arguably relevant to the Employer's defense in the underlying case which alleges that the subpoenaed individuals were discharged for their Union activity. In addition, there is no evidence that the service of the subpoenas was done in bad faith. In these respects, the instant case was viewed as distinguishable from John Dory Boat Works 4/ where the Board found the service of subpoenas duces tecum to be violative of Section 8(a)(1) in circumstances where the subpoenas sought production of documents which were wholly irrelevant to the issues raised in the complaint, the employer's effort to subpoena the documents was undertaken in bad faith, and the service of the subpoenas had a "devastating" impact on the witnesses which adversely affected their ability to testify. 5/

In sum, it was concluded that in the circumstances of this case, the mere service of the subpoenas duces tecum, without more, provides an insufficient basis upon which to premise an independent violation of Section 8(a)(1). Accordingly, further proceedings on the instant charge were deemed unwarranted.

H. J. D.

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4/ 229 NLRB 844 (1977).

5/ There is no evidence of such adverse impact on the subpoenaed individuals in the instant case.